

ISSUES PENDING BEFORE THE CALIFORNIA SUPREME COURT IN CIVIL CASES

[These case summaries are made available to inform the public of the general subject matter in cases that the Supreme Court has accepted for review. The statement of the issue or issues in each case set out below does not necessarily reflect the views of the court, or define the specific issues that will be addressed by the court. This compilation is current as of Friday, April 25, 2014.]

Ayala v. Antelope Valley Newspapers, Inc., S206874. (B235484; 210 Cal.App.4th 77; Los Angeles County Superior Court; BC403405.) Petition for review after the Court of Appeal affirmed in part and reversed in part an order denying class certification in a civil action. This case presents questions concerning the determination of whether common issues predominate in a proposed class action relating to claims that turn on whether members of the putative class are independent contractors or employees and the relevance of *Martinez v. Combs* (2010) 49 Cal.4th 35, 52-57, 73, and IWC wage order No. 1-2001, subdivision 2(D)-(F) (Cal. Code Regs., tit. 8, § 11010, subd. 2(D)-(F)), to the issues in this case. (See also *Sotelo v. Medianews Group, Inc.* (2012) 207 Cal.App.4th 639, 660-662; *Bradley v. Networkers Internat., LLC* (2012) 211 Cal.App.4th 1129, 1146-1147.)

B.H. v. County of San Bernardino, S213066. (E054516; nonpublished opinion; San Bernardino County Superior Court; CIVDS913403.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issues: (1) Does Penal Code section 11166, subdivision (k), create a mandatory duty requiring a law enforcement agency to cross-report to the relevant social services agency whenever it receives a report of known or suspected child abuse? (2) If so, when is that duty triggered? (3) Does Penal Code section 11166, subdivision (a), apply to law enforcement agencies that receive initial reports of child abuse? (4) If so, what standard should be applied to determine whether a follow-up report is required?

Baltazar v. Forever 21, Inc., S208345. (B237173; 212 Cal.App.4th 221; Los Angeles County Superior Court; VC059254.) Petition for review after the Court of Appeal reversed an order denying a petition to compel arbitration in a civil action. This case presents the following issue: Is an employment arbitration agreement unconscionable for lack of mutuality if it contains a clause providing that either party may seek provisional injunctive relief in the courts and the employer is more likely to seek such relief?

Barry v. State Bar of California, S214058. (B242054; 218 Cal.App.4th 1435; Los Angeles County Superior Court; BC452239.) Petition for review after the Court of Appeal reversed an order awarding attorney fees in a civil action. This case presents the following issue: If the trial court grants a special motion to strike under Code of Civil Procedure section 425.16 on the ground that the plaintiff has no probability of prevailing on the merits because the court lacks subject matter jurisdiction over the underlying dispute, does the court have the authority to award the prevailing party the attorney fees mandated by section 425.16, subdivision (c)?

Beacon Residential Community Assn. v. Skidmore, Owings & Merrill LLP, S208173. (A134542; 211 Cal.App.4th 1301; San Francisco County Superior Court; CGC-08-478453.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issue: May an architect who provides services to a residential developer be liable to the eventual purchasers of the residences for negligence in the rendition of those services?

Beauchamp v. City of Long Beach, S213420. (9th Cir. No. 11-55780; 730 F.3d 986; Central District of California; 2:10-cv-01270-RGK-JC.) Request under California Rules of Court, rule 8.548, that this court decide questions of California law presented in a matter pending in the United States Court of Appeals for the Ninth Circuit. The questions presented are: “Does the phrase ‘each offense’ [in Civil Code section 54.3, subdivision (a), specifying penalties for violation of the California Disabled Persons Act,] refer to each occasion when a plaintiff encounters a barrier that denies the plaintiff full and equal access to a public facility, or should a trial court construe ‘each offense’ more narrowly, particularly in situations where a plaintiff repeatedly encounters the same barrier? If the phrase ‘each offense’ is not susceptible to a narrower construction, under what circumstances would the penalty scheme in section 54.3 violate the due process clause of the state Constitution?”

Berkeley Hillside Preservation v. City of Berkeley, S201116. (A131254; 203 Cal.App.4th 656; Alameda County Superior Court; RG10517314.) Petition for review after the Court of Appeal reversed the judgment in an action for writ of administrative mandate. This case presents the following issue: Did the City of Berkeley properly conclude that a proposed project was exempt from the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) under the categorical exemptions set forth in California Code of Regulations, title 14, sections 15303, subdivision (a), and 15332, and that the “Significant Effects Exception” set forth in section 15300.2, subdivision (c), of the regulations did not operate to remove the project from the scope of those categorical exemptions?

In re Brianna M., S214955. (B245203; 220 Cal.App.4th 1025; Los Angeles County Superior Court; CK93880.) Petition for review after the Court of Appeal remanded for compliance with the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.) and otherwise affirmed the order on a petition to establish parentage. This case presents the following issue: If one man seeking presumptive father status in a dependency action has completed a voluntary declaration of paternity under Family Code section 7573 and another man seeking presumptive father status has satisfied the criteria of Family Code section 7611, subdivision (d), is the voluntary declaration of paternity controlling as a matter of law?

California Building Industry Assn. v. Bay Area Air Quality Management Dist., S213478. (A135335, A136212; 218 Cal.App.4th 1171; Alameda County Superior Court; RG10548693.) Petition for review after the Court of Appeal reversed the judgment in an action for writ of administrative mandate. The court limited review to the following issue: Under what circumstances, if any, does the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) require an analysis of how existing environmental conditions will impact future residents or users (receptors) of a proposed project?

California Building Industry Assn. v. City of San Jose, S212072. (H038563; 216 Cal.App.4th 1373; Santa Clara County Superior Court; 1-10-CV167289.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issue: What standard of judicial review applies to a facial constitutional challenge to inclusionary housing ordinances that require set asides or in-lieu fees as a condition of approving a development permit? (See *San Remo Hotel L.P. v. City & County of San Francisco* (2002) 27 Cal.4th 643, 670.)

California Charter Schools Assn. v. Los Angeles Unified School Dist., S208611. (B242601; 212 Cal.App.4th 689; Los Angeles County Superior Court; BC438336.) Petition for review after the Court of Appeal reversed an order in a civil action. Did the Court of Appeal adopt an incorrect methodology for determining what facilities a school district is required to afford to a charter school in accordance with Education Code section 47614?

Central Coast Forest Assn. v. Fish & Game Com., S208181. (C060569; 211 Cal.App.4th 1433; Sacramento County Superior Court; 07CS00851.) Petition for review after the Court of Appeal reversed the judgment in an action for writ of administrative mandate. The court limited review to the following issues: (1) Under the California Endangered Species Act, Fish and Game Code section 2050 et seq., may the Fish and Game Commission consider a petition to delist a species on the ground that the original listing was in error? (2) If so, does the petition at issue here contain sufficient information to warrant the Commission's further consideration?

In re Cipro Cases I & II, S198616. (D056361; 200 Cal.App.4th 442; San Diego County Superior Court; JCCP4154, JCCP4220.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issues: May a suit under the Cartwright Antitrust Act (Bus. & Prof. Code, § 16720 et seq.) be brought to challenge “reverse exclusionary payments” made by pharmaceutical manufacturers to settle patent litigation with generic drug producers and prolong the life of the patents in question? What is the relevance of *Federal Trade Com. v. Actavis, Inc.* (June 17, 2013, No. 12-416) __ U.S. __ [2013 WL 2922122] to the issues in this case?

City of Los Angeles v. County of Kern, S210150. (F063381; 214 Cal.App.4th 394; Tulare County Superior Court; VCU242057.) Petition for review after the Court of Appeal affirmed the issuance of a preliminary injunction in a civil action. The court limited review to the following issue: Does 28 U.S.C. section 1367(d) require a party to refile its state law claims within 30 days of their dismissal from a federal action in which they had been presented, or does it instead suspend the running of the limitations period during the pendency of the claims in federal court and for 30 days after their dismissal?

City of Perris v. Stamper, S213468. (E053395; 218 Cal.App.4th 1104; Riverside County Superior Court; RIC524291.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issues: (1) In this eminent domain case, was the constitutionality of the dedication requirement — that the city claimed it would have required in order to grant the property owner permission to put the property to a higher use — a question that had to be resolved by the jury pursuant to article I, section 19, of the California Constitution? (2) Was the dedication requirement a “project effect” that the eminent domain law required to be ignored in determining just compensation?

City of San Diego v. Trustees of the California State University, S199557. (D057446; 201 Cal.App.4th 1134; San Diego County Superior Court; GIC855643, GIC855701, 37-2007-00083692-CU-WM-CTL, 37-2007-00083773-CU-MC-CTL, 37-2007-00083768-CU-TT-CTL.) Petition for review after the Court of Appeal affirmed in part and reversed in part the judgment in a civil action. This case includes the following issue: Does a state agency that may have an obligation to make “fair-share” payments for the mitigation of off-site impacts of a proposed project satisfy its duty to mitigate under the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) by stating that it has sought funding from the Legislature to pay for such mitigation and that, if the requested funds are not appropriated, it may proceed with the project on the ground that mitigation is infeasible?

Coffey v. Shiimoto, S213545. (G047562; 218 Cal.App.4th 1288; Orange County Superior Court; 30-2012-00549559.) Petition for review after the Court of Appeal affirmed the judgment in an action for writ of administrative mandate. This case presents the following issues: (1) Can circumstantial evidence other than the results of chemical tests be used to prove that a driver's blood-alcohol content at the time of driving was the same as, or greater than, the results of a blood-alcohol test taken approximately an hour after driving? (2) Is the decision of the Court of Appeal consistent with the requirements of Evidence Code section 604 for proof of an initially presumed fact after the presumption has been rebutted?

Coker v. JP Morgan Chase Bank, N.A., S213137. (D061720; 218 Cal.App.4th 1; San Diego County Superior Court; 37-2011-00087958-CU-MC-CTL.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issues: (1) Do the anti-deficiency protections in Code of Civil Procedure section 580b apply to a borrower who engages in a "short sale" of real property when the lender approved the sale and reconveyed its deed of trust to facilitate the sale on the condition that the borrower remain liable for any outstanding balance on the loan following the sale? (2) Does a borrower's request that the creditor release its security interest in real property to facilitate a short sale result in a waiver of the protection of the "security first" rule set forth in Code of Civil Procedure section 726?

Conservatorship of McQueen, S209376. (A134337; nonpublished opinion; Alameda County Superior Court; HP05237122.) Petition for review after the Court of Appeal reversed an order granting a motion for post-judgment attorney fees and costs. This case presents the following issue: Is a trial court award of statutorily-mandated fees and costs incurred on appeal subject to the Enforcement of Judgments Statutes (Code Civ. Proc., § 685.040 et seq.) if the statutory authority underlying the award is the Elder Abuse Act (Welf. & Inst. Code, § 15600 et seq.)?

Cordova v. City of Los Angeles, S208130. (B236195; 212 Cal.App.4th 243; Los Angeles County Superior Court; BC442048, BC443948, BC444004.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. The court limited review to the following issue: May a government entity be held liable if a dangerous condition of public property existed and caused the injuries plaintiffs suffered in an accident, but did not cause the third party conduct that led to the accident?

Department of Finance v. Commission on State Mandates, S214855. (B237153; 220 Cal.App.4th 740, mod. 221 Cal.App.4th 166d; Los Angeles County Superior Court; BS130730.) Petition for review after the Court of Appeal affirmed the judgment in an action for writ of administrative mandate. This case presents the following issue: Are the requirements in the National Pollutant Discharge Elimination System (NPDES) permits issued to real parties in interest by the regional water quality control board state mandates subject to reimbursement under article XIII B, section 6, subdivision (b), of the state Constitution?

Duran v. U.S. Bank National Assn., S200923. (A125557, A126827; 203 Cal.App.4th 212, mod. 203 Cal.App.4th 1042b; Alameda County Superior Court; 2001035537.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents issues concerning the certification of class actions in wage and hour misclassification litigation and the use of representative testimony and statistical evidence at trial of such a class action.

Estate of Duke, S199435. (B227954; 201 Cal.App.4th 599; Los Angeles County Superior Court; BP108971.) Petition for review after the Court of Appeal affirmed the judgment in a probate proceeding. This case presents the following issue: Should the “four corners” rule (see *Estate of Barnes* (1965) 63 Cal.2d 580) be reconsidered in order to permit drafting errors in a will to be reformed consistent with clear and convincing extrinsic evidence of the decedent’s intent?

Even Zohar Construction & Remodeling, Inc. v. Bellaire Townhouses, LLC, S210804. (B239928; 215 Cal.App.4th 277; Los Angeles County Superior Court; BC458347.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issue: Do the requirements of Code of Civil Procedure section 1008, subdivision (b), which govern motions to renew previously denied motions, apply to renewed motions under Code of Civil Procedure section 473, subdivision (b), for relief from default judgment?

F.P. v. Monier, S216566. (C062329; 222 Cal.App.4th 1087; Sacramento County Superior Court; 06AS00671.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. The court limited review to the following issue: Is a trial court’s error in failing to issue a statement of decision upon a timely request reversible per se?

Flores v. Presbyterian Intercommunity Hospital, S209836. (B235409; 213 Cal.App.4th 1386; Los Angeles County Superior Court; VC058225.) Petition for review after the Court of Appeal reversed an order of dismissal of a civil action. This case presents the following issues: (1) Does the one-year statute of limitations for claims under the Medical Injury Compensation Act (Code Civil Proc., § 340.5) or the two-year statute of limitations for ordinary negligence (Code Civil Proc., § 335.1) govern an action for premises liability against a hospital based on negligent maintenance of hospital equipment? (2) Did the injury in this case arise out of “professional negligence,” as that term is used in section 340.5, or ordinary negligence?

Fluor Corp. v. Superior Court, S205889. (G045579; 208 Cal.App.4th 1506; Orange County Superior Court; 06CC00016.) Petition for review after the Court of Appeal denied a petition for peremptory writ of mandate. This case presents the following issue: Are the limitations on assignment of third party liability insurance policy benefits recognized in *Henkel Corp. v. Hartford Accident & Indemnity Co.* (2003) 29 Cal.4th 934 inconsistent with the provisions of Insurance Code section 520?

Friends of the College of San Mateo Gardens v. San Mateo County Community College Dist., S214061. (A135892; nonpublished opinion; San Mateo County Superior Court; CIV508656.) Petition for review after the Court of Appeal affirmed the judgment in an action for writ of administrative mandate. This case presents the following issue: When a lead agency performs a subsequent environmental review and prepares a subsequent environmental impact report, a subsequent negative declaration, or an addendum, is the agency's decision reviewed under a substantial evidence standard of review (*Mani Brothers Real Estate Group v. City of Los Angeles* (2007) 153 Cal.App.4th 1385), or is the agency's decision subject to a threshold determination whether the modification of the project constitutes a "new project altogether," as a matter of law (*Save our Neighborhood v. Lishman* (2006) 140 Cal.App.4th 1288)?

Gaines v. Fidelity National Title Ins. Co., S215990. (222 Cal.App.4th 25; Los Angeles County Superior Court; BC361768.) Petition for review after the Court of Appeal affirmed in part and reversed in part the judgment in a civil action. This case presents the following issue: Was this action properly dismissed for the failure to bring it to trial within five years or should the period during which the action was stayed for purposes of mediation have been excluded under Code of Civil Procedure section 583.340, subdivision (b) or (c)?

The Gillette Co. v. Franchise Tax Bd., S206587. (A130803; 209 Cal.App.4th 938; San Francisco County Superior Court; CGC-10-495911.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case includes the following issue: Were multistate taxpayers required to apportion business income according to the formula set forth in Revenue and Taxation Code section 25128 as amended in 1993 or could they elect to apportion income according to the formula set forth in former Revenue and Taxation Code section 38006 pursuant to the adoption of the Multistate Tax Compact in 1974?

Greater Los Angeles Agency on Deafness, Inc. v. Cable News Network, Inc., S216351. (9th Cir. No. 12-15807; 742 F.3d 871; Central District of California; 3:11-cv-03458-LB.) Request under California Rules of Court, rule 8.548, that this court decide a question of California law presented in a matter pending in the United States Court of Appeals for the Ninth Circuit. The question presented is: "Does the California Disabled Persons Act's reference to "places of public accommodation" [Civ. Code, § 54.1, subd. (a)(1)] include web sites, which are non-physical places?"

Gregory v. Cott, S209125. (B237645; 213 Cal.App.4th 41; Los Angeles County Superior Court; SC109507.) Petition for review after the Court of Appeal affirmed the summary judgment in a civil action. This case presents the following issue: Did the doctrine of primary assumption of the risk bar the complaint for damages brought by an in-home caregiver against an Alzheimer's patient and her husband for injuries the caregiver received when the patient lunged at her?

Hampton v. County of San Diego, S213132. (D061509; 218 Cal.App.4th 286; San Diego County Superior Court; 37-2010-00101299-CU-PA-CTL.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issue: Does a public entity establish the second element of design immunity under Government Code section 830.6 — discretionary approval of design plans — as a matter of law by presenting evidence that its design plans were approved by an employee with the discretion to do so, even if the plaintiff presents evidence that the design at issue violated the public entity’s own standards?

Hartford Casualty Ins. Co. v. J.R. Marketing, L.L.C., S211645. (A133750; 216 Cal.App.4th 1444; San Francisco County Superior Court; CGC-06-449220.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issue: After an insured has secured a judgment requiring an insurer to provide independent counsel to the insured (see *San Diego Fed. Credit Union v. Cumis Ins. Society Inc.* (1984) 162 Cal.App.3d 358), can the insurer seek reimbursement of defense fees and costs it considers unreasonable and unnecessary by pursuing a reimbursement action against independent counsel or can the insurer seek reimbursement only from its insured?

Hartford Casualty Ins. Co. v. Swift Distribution, Inc., S207172. (B234234; 210 Cal.App.4th 915; Los Angeles County Superior Court; BC442537.) Petition for review after the Court of Appeal affirmed the summary judgment in a civil action. This case presents the following issue: Did the allegations of the complaint constitute disparagement for purposes of insurance coverage or the duty to defend under the “advertising injury” provision of defendant’s insurance policy?

Iskanian v. CLS Transportation Los Angeles, LLC, S204032. (B235158; 206 Cal.App.4th 949; Los Angeles County Superior Court; BC356521.) Petition for review after the Court of Appeal affirmed an order granting a motion to compel arbitration and dismissing class claims. This case presents the following issues: (1) Did *AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. __ [131 S. Ct. 1740, 179 L.Ed.2d 742] impliedly overrule *Gentry v. Superior Court* (2007) 42 Cal.4th 443 with respect to contractual class action waivers in the context of non-waivable labor law rights? (2) Does the high court’s decision permit arbitration agreements to override the statutory right to bring representative claims under the Labor Code Private Attorneys General Act of 2004 (Lab. Code, § 2698 et seq.)? (3) Did defendant waive its right to compel arbitration?

Kandy Kiss of California, Inc. v. Tex-Ellent, Inc., S206354. (B234541; 209 Cal.App.4th 604; Los Angeles County Superior Court; BC422116.) Petition for review after the Court of Appeal affirmed an award of attorney fees in a civil action. This case presents the following issue: Is a party who obtains the dismissal of a contract action entirely on procedural grounds entitled to an award of attorney fees under Civil Code section 1717 as the prevailing party in an action on a contract?

Kilby v. CVS Pharmacy, Inc./Henderson v. JPMorgan Chase Bank NA, S215614. (9th Cir. Nos. 12-56130, 13-56095; 739 F.3d 1192, Southern District of California, 3:09-cv-02051-MMA-KSC; Central District of California, 2:11-cv-03428-PSG-PLA.)

Request under California Rules of Court, rule 8.548, that this court decide questions of California law presented in consolidated appeals pending in the United States Court of Appeals for the Ninth Circuit. The questions presented are: For purposes of IWC Wage Order 4-2001 § 14(A) and IWC Wage Order 7-2001 § 14(A), “(1) Does the phrase ‘nature of the work’ refer to an individual task or duty that an employee performs during the course of his or her workday, or should courts construe ‘nature of the work’ holistically and evaluate the entire range of an employee’s duties? (a) If the courts should construe ‘nature of the work’ holistically, should the courts consider the entire range of an employee’s duties if more than half of an employee’s time is spent performing tasks that reasonably allow the use of a seat? (2) When determining whether the nature of the work ‘reasonably permits’ the use of a seat, should courts consider any or all of the following: the employer’s business judgment as to whether the employee should stand, the physical layout of the workplace, or the physical characteristics of the employee? (3) If an employer has not provided any seat, does a plaintiff need to prove what would constitute ‘suitable seats’ to show the employer has violated Section 14(A)?”

Larkin v. Workers’ Comp. Appeals Bd., S216986. (C065891; 223 Cal.App.4th 538.) Petition for review after the Court of Appeal affirmed a decision of the Board. This case presents the following issue: Do the benefits provided under Labor Code section 4458.2 extend both to volunteer peace officers and to regularly sworn, salaried officers?

Loeffler v. Target Corp., S173972. (B199287; 173 Cal.App.4th 1229; Los Angeles County Superior Court; BC360004.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issue: Does article XIII, section 32 of the California Constitution or Revenue and Taxation Code section 6932 bar a consumer from filing a lawsuit against a retailer under the Unfair Competition Law (Bus. & Prof. Code §§ 17200 et seq.) or the Consumers Legal Remedies Act (Civ. Code, § 1750 et seq.) alleging that the retailer charged sales tax on transactions that were not taxable?

Long Beach Police Officers Assn. v. City of Long Beach, S200872. (B231245; 203 Cal.App.4th 292; Los Angeles County Superior Court; NC055491.) Petition for review after the Court of Appeal affirmed an order denying a request for a preliminary injunction. This case presents the following issue: Are the names of police officers involved in on-duty shooting incidents subject to disclosure under the California Public Records Act?

In re Marriage of Davis, S215050. (A136858; 220 Cal.App.4th 1109; Alameda County Superior Court; RF08428441.) Petition for review after the Court of Appeal affirmed an order in a marital dissolution proceeding. The court limited review to the following issue: For the purpose of establishing the date of separation under Family Code section 771, may a couple be “living separate and apart” when they reside in the same residence?

In re Marriage of Valli, S193990. (B222435; 195 Cal.App.4th 776; Los Angeles County Superior Court; BD414038.) Petition for review after the Court of Appeal reversed the judgment in a marital dissolution action. This case includes the following issue: Did the CA err in concluding that an insurance policy on the husband’s life was the wife’s separate property on dissolution of the marriage, even though the policy was purchased during the marriage and the premiums prior to the couple’s separation were paid with community funds, because the policy listed the wife as the owner?

Mendiola v. CPS Security Solutions, Inc., S212704. (B240519; 217 Cal.App.4th 851; Los Angeles County Superior Court; BC391669.) Petition for review after the Court of Appeal affirmed in part and reversed in part an order granting a preliminary injunction in a civil action. This case presents the following issue: Are the guards that defendants provide for construction site security entitled to compensation for all nighttime “on call” hours, or may defendants deduct sleep time depending on the structure of the guards' work shifts?

Monterey Peninsula Water Dist. v. Public Utilities Com., S208838. Original proceeding. This case presents the following issue: Does the Public Utilities Commission have the authority to review and regulate a user fee imposed by a local government entity that is collected through the bills of a regulated public utility?

Nickerson v. Stonebridge Life Ins. Co., S213873. (B234271; 219 Cal.App.4th 188; Los Angeles County Superior Court; BC405280.) Petition for review after the Court of Appeal modified and affirmed the judgment in a civil action. The court limited review to the following issue: Is an award of attorney fees under *Brandt v. Superior Court* (1985) 37 Cal.3d 813 properly included as compensatory damages where the fees are awarded by the jury, but excluded from compensatory damages when they are awarded by the trial court after the jury has rendered its verdict?

Orange Citizens for Parks & Recreation v. Superior Court, S212800. (G047013, G047219; 217 Cal.App.4th 1005; Orange County Superior Court; 30-2011-00494437.) Petition for review after the Court of Appeal affirmed in part and reversed in part the judgment in an action for writ of administrative mandate. This case presents the following issue: Is the proposed development project of low density housing at issue in this case consistent with the city’s general plan?

Paratransit, Inc. v. Unemployment Ins. Appeals Bd., S204221. (C063863; 206 Cal.App.4th 1319; Sacramento County Superior Court; 34200980000249.) Petition for review after the Court of Appeal affirmed the judgment in an action for writ of administrative mandate. This case presents the following issue: Did the trial court properly find that employee misconduct within the meaning of *Amador v. Unemployment Ins. Appeals Bd.* (1984) 35 Cal.3d 671 disqualified a discharged employee from receiving unemployment insurance benefits?

Parker v. State of California, S215265. (F062490; 221 Cal.App.4th 340; Fresno County Superior Court ; 10CECG02116.) Petition for review after the Court of Appeal granted a permanent injunction in a civil action. This case presents the following issue: Are the Penal Code sections that regulate “ammunition principally for use in pistols, revolvers, and other firearms capable of being concealed upon the person, notwithstanding that the ammunition may also be used in some rifles” (Pen. Code, § 16650, subd. (a)) unconstitutional on their face for failure to afford adequate notice of the regulated conduct and/or failure to provide sufficient guidelines to prevent arbitrary enforcement?

Patterson v. Domino’s Pizza, LLC, S204543. (B235099; 207 Cal.App.4th 385; Ventura County Superior Court; 56-2009-00347668-CU-OE-SIM.) Petition for review after the Court of Appeal reversed the summary judgment in a civil action. The court limited review to the question discussed in the Court of Appeal’s opinion, namely, whether the defendant franchisor is entitled to summary judgment on plaintiff’s claim that it is vicariously liable for tortious conduct by a supervising employee of a franchisee.

Peabody v. Time Warner Cable, Inc., S204804. (9th Cir. No. 10-56846; 689 F.3d 1134; Central District of California; 2:09-cv-06485-AG-RNB.) Request under California Rules of Court, rule 8.548, that this court decide a question of California law presented in a matter pending in the United States Court of Appeals for the Ninth Circuit. As restated by the court, the question presented is: May an employer, consistent with California’s compensation requirements, allocate an employee’s commission payments to the pay periods for which they were earned?”

People ex rel. Harris v. Pac Anchor Transportation, Inc., S194388. (B220966; 195 Cal.App.4th 765; Los Angeles County Superior Court; BC397600.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issues: Is an action under the Unfair Competition Law (Bus. & Prof. Code, § 17200 et seq.) that is based on a trucking company's alleged violation of state labor and insurance laws "related to the price, route, or service" of the company and, therefore, preempted by the Federal Aviation Administration Authorization Act of 1994 (49 U.S.C. § 14501)? What is the effect of *American Trucking Associations, Inc. v. City of Los Angeles* (June 13, 2013, No. 11-798) __ U.S. __ [2013 WL 2631059], and *Dan's City Used Cars, Inc. v. Pelkey* (2013) __ U.S. __ [133 S. Ct. 1769] on the question whether the Federal Aviation Administration Authorization Act of 1994 (49 U.S.C. § 14501) (FAAAA) preempts a claim under the state Unfair Competition Law (UCL; Bus. & Prof. Code, § 17200 et seq.) against defendants for alleged misclassification of employees as independent contractors, and other alleged violations of California labor and unemployment insurance laws?

Poole v. Orange County Fire Authority, S215300. (G047691, G047850; 221 Cal.App.4th 155; Orange County Superior Court; 30-2011-00463651.) Petition for review after the Court of Appeal reversed the judgment in an action for writ of administrative mandate. This case presents the following issue: Did a daily log about firefighters, which was maintained by a supervisor and used by the supervisor to prepare annual performance evaluations, qualify under the Firefighters Procedural Bill of Rights Act (Gov. Code, § 3250 et seq.) as a personnel file and/or as a file used for personnel purposes?

Rashidi v. Moser, S214430. (B237476; 219 Cal.App.4th 1170; Los Angeles County Superior Court; BC392082.) Petition for review after the Court of Appeal modified and affirmed the judgment in a civil action. The court limited review to the following issue: If a jury awards the plaintiff in a medical malpractice action non-economic damages against a healthcare provider defendant, does Civil Code section 3333.2 entitle that defendant to a setoff based on the amount of a pretrial settlement entered into by another healthcare provider that is attributable to non-economic losses or does the statutory rule that liability for non-economic damages is several only (not joint and several) bar such a setoff?

Richey v. Autonation, Inc., S207536. (B234711; 210 Cal.App.4th 1516, mod. 211 Cal.App.4th 701b; Los Angeles County Superior Court; BC408319.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issues: (1) Is an employer's honest belief that an employee was violating company policy or abusing medical leave a complete defense to the employee's claim that the employer violated the Moore-Brown-Roberti Family Rights Act (Gov. Code §§ 12945.1, 12945.2)? (2) Was the decision below to vacate the arbitration award in the employer's favor consistent with the limited judicial review of arbitration awards?

Riverside County Sheriff's Dept. v. Stiglitz, S206350. (E052729, E052807; 209 Cal.App.4th 883; Riverside County Superior Court; RIC10004998). Petition for review after the Court of Appeal reversed an order granting a petition for writ of administrative mandate. This case presents the following issue: (1) Does the hearing officer in an administrative appeal of the dismissal of a correctional officer employed by a county sheriff's department have the authority to grant a motion under *Pitchess v. Superior Court* (1974) 11 Cal.3d 531? (2) Assuming that a motion for discovery of officer personnel records may be filed in an administrative proceeding (Evid. Code, § 1043, subd. (a)), and a hearing officer has authority to determine that the motion states good cause for discovery (Evid. Code, § 1043, subd. (b)(3)), is there any existing statutory mechanism that would allow the matter to be transferred to the superior court for an in camera review of the records by a judicial officer (Evid. Code, § 1045, subd. (b))? (3) If no existing statutory mechanism applies, does the court have the authority to create such a transfer mechanism?

Salas v. Sierra Chemical Co., S196568. (C064627; 198 Cal.App.4th 29; San Joaquin County Superior Court; CV033425.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issues: (1) Did the trial court err in dismissing plaintiff's claims under the Fair Employment and Housing Act (Gov. Code, § 12900 et seq.) on grounds of after-acquired evidence and unclean hands, based on plaintiff's use of false documentation to obtain employment in the first instance? (2) Did Senate Bill No. 1818 (2001-2002 Reg. Session) preclude application of those doctrines in this case? (See Civ. Code, § 3339; Gov. Code, § 7285; Health & Saf. Code, § 24000; Lab. Code, § 1171.5.) (3) Does federal immigration law preempt state law and thereby preclude an undocumented worker from obtaining, as a remedy for a violation of "state labor and employment laws" (Lab. Code, § 1171.5; Civ. Code, § 3339; Gov. Code, § 7285; Health & Saf. Code, § 24000), an award of compensatory remedies, including back pay? (See *Hoffman Plastic Compounds, Inc. v. NLRB* (2002) 535 U.S. 137.)

Sanchez v. Valencia Holding Co. LLC, S199119. (B228027; 201 Cal.App.4th 74; Los Angeles County Superior Court; BC433634.) Petition for review after the Court of Appeal affirmed an order denying a petition to compel arbitration. This case includes the following issue: Does the Federal Arbitration Act (9 U.S.C. § 2), as interpreted in *AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. __ [131 S. Ct. 1740, 179 L.Ed.2d 742], preempt state law rules invalidating mandatory arbitration provisions in a consumer contract as procedurally and substantively unconscionable?

South Coast Framing, Inc. v. Workers' Comp. Appeals Bd., S215637. (D063945; nonpublished opinion.) Petition for review after the Court of Appeal annulled a decision of the Board. This case presents the following issue: Does a claim for workers' compensation death benefits have a separate and distinct causation standard and burden of proof requiring that an industrial injury constitute a "material factor" contributing to the employee's death, or does the standard require only that the industrial injury be a "contributing cause"?

State Dept. of Public Health v. Superior Court, S214679. (C072325; 219 Cal.App.4th 966; Sacramento County Superior Court; 34201280001044.) Petition for review after the Court of Appeal granted a petition for preemptory writ of mandate. This case presents the following issue: In the context of a request under the Public Records Act (Gov. Code, § 6250) for citations issued by the Department of Public Health to state facilities housing the mentally ill and the developmentally disabled, can the public accessibility provisions for citations issued under the Long-Term Care Act (Health & Saf. Code, § 1417 et seq.) be reconciled with the confidentiality provisions of the Lanterman-Petris-Short Act (Welf. & Inst. Code, § 5000 et seq.) and the Lanterman Developmental Disabilities Services Act (Welf. & Inst. Code, § 4500 et seq.), and, if so, how?

State Dept. of State Hospitals v. Superior Court, S215132. (B248603; 220 Cal.App.4th 1503; Los Angeles County Superior Court; BC487936.) Petition for review after the Court of Appeal granted in part and denied in part a petition for preemptory writ of mandate. This case presents the following issues: (1) Did the state comply with the requirement of the Sexually Violent Predator Act (Welf. & Inst. Code, § 6600 et seq.) that it conduct a "full evaluation" of an inmate potentially qualifying as a "sexually violent predator" prior to the inmate's release? (2) Did the Court of Appeal err in finding that, as a matter of law, plaintiff could not establish that defendants' actions were a proximate cause of her injuries?

State ex rel. Dept. of California Highway Patrol v. Superior Court, S214221. (G047922; 220 Cal.App.4th 612; Orange County Superior Court; 30-2008-00116111.) Petition for review after the Court of Appeal granted a petition for preemptory writ of mandate. This case presents the following issue: Can the California Highway Patrol be considered the special employer of a tow truck driver participating in the Freeway Service Program?

Tract 19051 Homeowners Assn. v. Kemp, S211596. (B236015; nonpublished opinion; Los Angeles County Superior Court; BC398978.) Petition for review after the Court of Appeal reversed an award of attorney fees and otherwise affirmed the judgment in a civil action. The court limited review to the following issue: Is a prevailing homeowner entitled to attorney fees under Civil Code section 1354 in an action by a homeowners association to enforce its governing documents as those of a common interest development when the homeowner prevailed because it was later determined that the subdivision was not such a development and its governing documents had not been properly reenacted?

Tuolumne Jobs & Small Business Alliance v. Superior Court, S207173. (F063849; 210 Cal.App.4th 1006; Tuolumne County Superior Court; CV56309.) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate. This case presents the following issues: (1) Must a city comply with the California Environmental Quality Act [CEQA] (Pub. Resources Code, § 21000 et seq.) before adopting an ordinance enacting a voter-sponsored initiative pursuant to Elections Code section 9214, subdivision (a)? (2) Is the adoption of an ordinance enacting a voter-sponsored initiative under Elections Code section 9214, subdivision (a), a “ministerial project” exempt from CEQA pursuant to Public Resources Code section 21080, subdivision (b)(1)?

Verdugo v. Target Corp., S207313. (9th Cir. No. 10-57008; 704 F.3d 1044; Central District of California; 2:10-cv-06930-ODW-AJW.) Request under California Rules of Court, rule 8.548, that this court decide a question of California law presented in a matter pending in the United States Court of Appeals for the Ninth Circuit. The question presented is: “In what circumstances, if ever, does the common law duty of a commercial property owner to provide emergency first aid to invitees require the availability of an Automatic External Defibrillator (‘AED’) for cases of sudden cardiac arrest?”

Webb v. Special Electric Co., Inc., S209927. (B233189; 214 Cal.App.4th 595, mod. 214 Cal.App.4th 1386d; Los Angeles County Superior Court; BC436063.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issues: (1) Should a defendant that supplied raw asbestos to a manufacturer of products be found liable to the plaintiffs on a failure to warn theory? (2) Was the trial court’s decision to treat defendant’s pre-trial motions for nonsuit and for a directed verdict as a post-trial motion for judgment notwithstanding the verdict procedurally improper, and if so, was it sufficiently prejudicial to warrant reversal?

Williams v. Chino Valley Independent Fire Dist., S213100. (E055755; 218 Cal.App.4th 73; San Bernardino County Superior Court; CIVRS801732.) Petition for review after the Court of Appeal affirmed an order awarding costs in a civil action. This case presents the following issue: Is a prevailing defendant in an action under the Fair Employment and Housing Act (Gov. Code, § 12900 et seq.) required to show that the plaintiff's claim was frivolous, unreasonable, or groundless in order to recover ordinary litigation costs?

Winn v. Pioneer Medical Group, Inc., S211793. (B237712; 216 Cal.App.4th 875; Los Angeles County Superior Court; BC455808.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issue: Does "neglect" within the meaning of the Elder Abuse and Dependent Adult Civil Protection Act (Welf. & Inst. Code, § 15657) include a health care provider's failure to refer an elder patient to a specialist if the care took place on an outpatient basis, or must an action for neglect under the Act allege that the defendant health care provider had a custodial relationship with the elder patient?